IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7211 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL ALUMINIUM ROLLING MILLS

Versus

AMBIKASHA RAMKISHANSHA

Appearance:

1. Special Civil Application No. 7211 of 1999

MR JT TRIVEDI for Petitioner No. 1

MR BJ TRIVEDI for Petitioner No. 1

MS DEVYANI N DAVE for Petitioner No. 1

MR SH LIGHTWALA for Petitioner No. 1

MR MS TRIVEDI for Respondent No. 1

MR RAJENDRA M DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the legality of the award dated 27.5.1999, passed by the Labour Court, Rajkot, by which the Reference of the respondent workman came to be allowed and the alleged termination of the services of the respondent workman was set aside and it was directed that the employer should reinstate the workman with continuity of service and 80% backwages.

2. The main point of dispute between the parties before the Labour Court was whether the respondent herein i.e. workman was terminated from service or whether he had voluntarily abandoned his service. The Labour Court, after considering the evidence on record, came to the conclusion that the respondent herein had succeeded in establishing that his services were terminated and that too without following the procedure laid down under the law. The Labour Court was therefore, pleased to reject the contention of the petitioner employer that it was the workman who had voluntarily stopped coming for work.

3. Learned Counsel appearing for the petitioner points out that the observation of the Labour Court that the notice of the workman though replied by the employer by its letter Exhibit 23, in the said letter the petitioner has nowhere stated that the workman should resume duty. He has drawn my attention to the said letter dated 26.5.1987, in which the petitioner had, while replying to the notice of the respondent, stated inter-alia that he should immediately resume duties and that he has not been terminated. He therefore, submits that the Labour Court award suffers from material illegality.

4. Though I agree with the contention of the learned Counsel for the petitioner that in the letter dated 26.5.1987 Ex.23, the petitioner did indicate to the respondent to resume duty forthwith and to that extent the observation of the Labour Court are not born out from the record. The award of the Labour Court is not based solely on this factor and there were other circumstances which the Labour Court took into account to come to the conclusion that the services of the respondent workman were terminated by the petitioner. When the Labour Court, having taken into account all the relevant aspects of the matter and the evidence produced on record have come to the conclusion that the action of the petitioner of terminating the services of the respondent is illegal, it is not possible for this Court to interfere with such finding of fact in exercise of powers under Article

226/227 of the Constitution of India. The award of the Labour Court therefore, cannot be interfered with in so far as the same holds that the action of the petitioner of terminating the services of the respondent is illegal.

5. It is not in dispute that by now the respondent workman has crossed the age of 60 years and therefore, there is no question of his reinstatement in service. Though I am inclined to uphold the award of the Labour Court, I find that the direction for payment of 80% backwages cannot be upheld. The learned Counsel for the respondent also concedes that the direction for payment of backwages can be suitably modified. In this view of the matter and on the concession of the learned Counsel for the respondent, it is directed that instead of 80% of the backwages, the respondent workman will be entitled to receive 25% of the backwages from the date of termination, till he reached the age of 60 years. For the purpose of showing the date on which he reached the age of 60 years, the respondent shall approach the petitioner with some evidence which may be available at his command. With these modifications and directions, the petition is disposed of. Rule is discharged with no order as to costs.

6. By order dated 20th August, 2002 in Civil Application No. 3040 of 2002, this Court had directed the petitioner to pay an adhoc amount of Rs. 5,000/- to the respondent. It is stated by the Counsel for the respondent that the said amount is not yet paid. It is directed that in addition to the backwages as directed above, the petitioner shall also pay the said outstanding amount of Rs. 5,000/- to the respondent.

(Akil Kureshi, J.)

*/Mohandas